

TESTIMONY BEFORE THE HOUSE ENERGY & TECHNOLOGY COMMITTEE
ON BEHALF OF THE CUSTOMER CHOICE COALITION

Robert B. Nelson
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Chairman Accavitti and Committee members, we wish to thank you for the opportunity to make a presentation on House Bills 5520-5524 relating to restructuring of the electric industry, HB 5525 regarding energy efficiency and HB 5548 and 5549 which establish a Renewable Portfolio Standard for Michigan.

The Customer Choice Coalition represents a wide range of Michigan industrial and commercial energy users ranging from the Big 3 automotive companies who are members of the ABATE organization to the Small Business Association of Michigan, the Michigan Retailers, the National Federation of Independent Business, Schools and many others. These organizations strongly oppose HB 5520-24 but, with amendments, can support passage of energy efficiency and renewable resource legislation. We urge that this committee break the tie bar linking energy efficiency and renewable resource legislation to the HB 5520-24 package for reasons that we will describe below.

Renewable Resource Power HB 5548 and 5549

We believe that progress is being made on HB 5548 and 5549 to establish a Renewable Resource Portfolio Standard. The Customer Choice Coalition has taken the position that it can support a mandatory Renewable Resource Portfolio Standard for Michigan on two conditions:

1. The cost of mandated renewable resource purchases should be limited to 103% of the cost of a new base load coal fired power plant. This price limitation will ensure that Michigan's customers will receive renewable energy at a price that is roughly comparable with the new alternative supplies of power being considered by utilities.

2. The CCC supports use of a competitive bid framework to acquire the mandated renewable resources. Competitive sourcing of renewable power will ensure the lowest possible price and provide an opportunity for a wide range of Michigan communities, entrepreneurs and even utilities to supply mandated renewable resources.

With these two conditions the Customer Choice Coalition can support mandated renewable power purchases of 6% in 2010, 8% by 2012 and 10% by 2015.

HB 5520-5524

The Customer Choice Coalition strongly urges that the Committee reject HB 5520-24.

File and Use Rates: HB 5523

HB 5523 would allow utility rate increase requests to take effect automatically 90 days after filing without MPSC approval, making Michigan the most utility-friendly and consumer-unfriendly State for processing rate cases. P. 2. The law would allow utilities to implement rate hikes based on projected (not actual) increases which would raise rates above levels previously allowed under MPSC regulation. Utility plant construction costs could be included in allowed

projections. P. 2. Automatic rate increases could be rolled back with interest at the end of the case but meanwhile, new rate increase requests (pancaking) could be filed nine months after existing increases were filed. P. 5. Currently, the MPSC has legal authority to issue temporary orders in the case of purchase power and purchase gas requests to prevent implementation within 90 days of filing. HB 5523 would not allow such temporary orders and therefore the increases could not be stopped within the 90 day period. The ability to pancake rate increase requests removes any disincentive to excessive utility requests that might have been created by the relatively high interest rate on refunds.

The large construction programs proposed by utilities often amount to \$200 million to \$400 million of increased investment per year. In the case of an April 1 rate filing, use of a projected test year would result in automatic increases which relate to investments not in place until the following January. For a \$200 million investment taking place through the following year, rates could automatically go up as much as \$30 million six months prior to the utility even starting to make the investment. This result could not take place under current MPSC regulation which does not allow for interim (temporary) increases on the basis of projected data. The net result of the HB 5523 system would certainly be higher rates for customers than under the current system.

Certificate of Need: HB 5521

The Certificate of Need legislation proposed in HB 5521 restricts competitive bidding to the purchase of power or the construction of a power plant at the choice of the utility. If construction is chosen, only utilities would be allowed to own and operate the power plants. P. 3-4. Cost overruns on projected costs would be presumed reasonable if evidence was merely

presented to justify the increases. P. 5. Customers would be forced to provide funding to cover the cost of power plants during construction before the plants were used and useful. P. 3. The effect of this legislation would be to shift most of the risk of power plant performance, price and delay from utilities to customers. Together with the limitations on the Choice program contained in HB 5524 this bill would restore the utility monopoly on generation since utility power plants would enjoy customer subsidies not provided to regulated competitors.

Rate Shifting: HB 5522

HB 5522 requires the Michigan Public Service Commission to reverse a series of decisions regarding the fair share of each customer to be paid for a utility cost. P. 2. HB 5524 would shift more than \$350 million of utility costs from business customers to residential customers in the case of Consumers Energy and Detroit Edison (increases of 8-10%) on top of the other increases for inflation, new construction and plant upgrades. Other investor owned utility residential customers would see rate shifting increases as well. The legislation creates new subsidized rates for selected business customers relating to economic development which would have to be paid by existing business customers. P. 3. In effect, General Motors could be forced to subsidize a new Toyota plant moving into Michigan. For this reason, the legislation harms both residential and commercial customers. See Exhibit A-13, Detroit Edison Case U-15244 and Exhibit A-44 Consumers Energy utility Case U-15245.

Sale of Power Plants: HB 5520

HB 5520 governs the sale of power plants but would allow utilities to sell their existing plants without restriction regarding the impact on customers or the utility's own financial health. The MPSC could disapprove such sales only if Choice was repealed. P. 3. Currently, utilities are at risk that the Public Service Commission may disallow an unreasonable and imprudent sale of a power plant after the issue is litigated in a rate case.

Elimination of Choice: HB 5524

The CCC strongly opposes HB 5524 which would effectively eliminate customer Choice in Michigan. The one time right of customers to elect Choice within 90 days of passage would force customers to make decisions on the cost of years of future electric prices without the data or knowledge necessary to make a reasonable choice. P. 2-3. Marketers would leave the State because a large body of customers was no longer eligible for their product. Finally, the bill contains language which would allow Consumers Energy to collect over \$60 million of stranded costs from both former Choice and retail customers. P. 6-7.

The two arguments that have been advanced to repeal or limit Choice are easily refuted. First, critics of Choice say that with Choice the uncertainty regarding size of customer load to be served makes it impossible for utilities to finance new base load power plants. This is untrue. The attached chart labeled Michigan Capacity Being Considered shows that five base load power plants are now being considered for development. Two of the plants are proposed by Consumers Energy and DTE who say that they will not proceed with development until PA 141 is repealed

or amended. However, Wolverine Power and LS Power are developing utility scale base load coal fired generation in Rogers City and Midland, Michigan without demanding public subsidies or revision of PA 141. Both Wolverine and LS applied to the DEQ for necessary air permits before Consumers Energy. Critics who claim that construction has not started on these projects ignore the fact that air permits must be secured first before construction. Wolverine and LS are spending millions of dollars (arguably as much or more than Consumers) to secure the required air permits. These Wolverine and LS power plant projects are concrete examples of the fact that base load power plant development can proceed without revision of PA 141.

If Choice is an impediment to utility financing as claimed by DTE and Consumers, why has Consumers been able to sign a power purchase agreement with Entergy for over 700 MW of base load and to purchase a \$500 million power plant from LS?

How can DTE and Consumers claim that PA 141 produces revenue uncertainty when they are urging permanent adoption of an experimental plan implemented for DTE based on the claims that the plan will eliminate Choice revenue uncertainty?

The other claim made by critics of PA 141 is that all classes of customers have not benefited from competition. The attached study prepared by the MPSC tells a different story. From May 2000 through May 2007 (long after the rate caps in PA 141 expired) residential rate increases were held to regional averages and well below national averages. Increases for commercial and industrial customers were well below regional and national averages. In fact, the utility with the largest increases (Wisconsin) financed generating plants with many of the same mechanisms

proposed in HB 5521 and is among the most heavily regulated states in the region. Indiana, another heavily regulated state, had overall increases higher than Michigan.

Other benefits to residential customers include a 5% reduction in 2000 and a five year freeze at this level. Securitization of nuclear generating plant costs produced an additional 5% reduction through 2015.

Conclusion

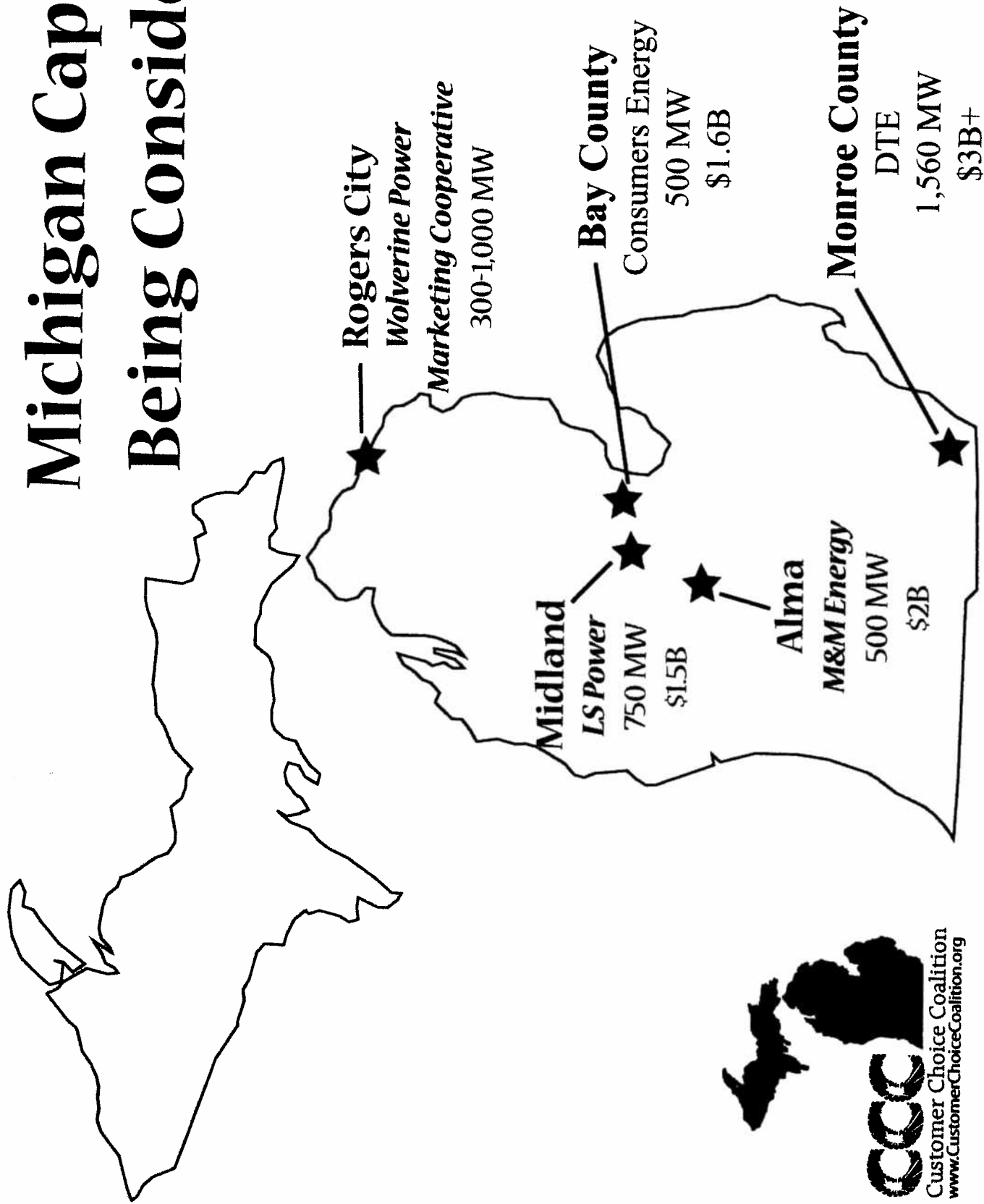
If this Committee wishes to make progress on legislation that can gain widespread support, the CCC respectfully suggests that it focus on HB 5548 and 5549 regarding Renewable Portfolio Standards and HB 5525 regarding energy efficiency. We believe that a consensus can be forged on this legislation which could help secure new, economical power supplies or their equivalent for all citizens.

The entire discussion of regulatory reform was supposed to focus on financing and development of base load power plants in Michigan. Yet the five bills before this Committee (HB 5520-24) and potential substitutes propose automatic rate increase mechanisms, sale of existing utility plants with little or no customer protection, repeal of competition and shifting of hundreds of millions of dollars of costs to residential customers. The only bill in the package arguably on point is HB 5521. The Customer Choice Coalition respectfully suggests that HB 4630 which has been introduced in the House by Rep. Moolenaar would be a far better place to start discussion regarding the regulatory framework necessary to ensure construction and financing of base load power plants.

The CCC believes that the HB 4630 process with a determination of need by the MPSC, competitive bidding from all sources of base load power or its equivalent as a source of supply and regulatory approval, evaluation by an independent third party evaluator and regulatory approval of cost recovery is a far better place to start this discussion than the HB 5520-24 bills currently before this Committee.

Thank you for the opportunity to make this presentation.

Michigan Capacity Being Considered



Retail Electric Rates
Cents per kilowatt-hour
 May 2007 (most recent available)

	Residential	Commercial	Industrial
Michigan	10.18	9.12	6.08
Illinois	10.40	8.43	6.57
Indiana	8.74	7.28	4.94
Ohio	9.97	8.89	5.77
Wisconsin	11.12	8.69	6.22
Regional Average	10.04	8.57	5.81
National Average	10.76	9.48	6.25

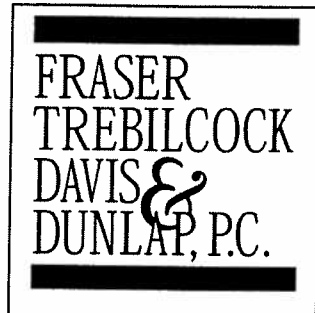
May 2001 (when Public Act 141 was passed)

	Residential	Commercial	Industrial
Michigan	8.5	8.2	5.1
Illinois	9.1	7.2	4.4
Indiana	7.4	5.9	3.6
Ohio	8.8	7.6	4.7
Wisconsin	7.7	6.1	4.0
Regional Average	8.4	7.2	4.4
National Average	8.32	7.11	4.41

Increase from May 2000 to May 2007

	Residential	Commercial	Industrial
Michigan	19.8%	11.2%	19.2%
Illinois	14.3%	17.1%	49.3%
Indiana	18.1%	23.4%	37.2%
Ohio	13.3%	17.0%	22.8%
Wisconsin	44.4%	42.5%	55.5%
Regional Average	19.5%	19.0%	32.0%
National Average	29.3%	33.3%	41.7%

MEMORANDUM



To: Rep. Frank Accavitti, Jr.
House Energy & Technology Committee Chair

House Energy & Technology Committee Members

From: Robert B. Nelson for the Customer Choice Coalition

Re: HB 5523

Date: December 18, 2007

The Customer Choice Coalition believes it is critical that you be informed of certain misleading statements that were made in Committee on December 12, 2007, regarding HB 5523 by the Chief Executive Officer of CMS Energy, Mr. David Joos. If left uncorrected, the statements may lead you to believe that enacting HB 5523 would not be a major departure from the statutory framework in effect for electric rate cases in other states nor a major departure from the operation of Michigan's power supply and gas cost recovery clauses. As we will demonstrate, enacting HB 5523 would make Michigan, by far and away, the most generous state for utilities in its handling of electric rate cases.

Mr. Joos testified that the "file and use" system in HB 5523 is similar to regulatory systems in "42 other states." In fact, there are approximately 40 states that allow electric utility rate increases to take effect after a certain time period has elapsed without action by the regulatory commission. However, more than 70% of those states allow the commission to suspend the rate case at least once following an initial period of review so that the rate increase cannot take effect until at least 6 months has elapsed after the filing of the case. In some states the suspension period can run for as long as 15 months. An examination of the time it takes for these states to process rate cases reveals that the states invariably decide all of their rate cases before the end of the suspension period. These systems are more properly termed "file and suspend", as opposed to "file and use." In contrast, the provisions of HB 5523 do not allow the Commission to suspend a rate increase and there is absolutely no possibility that a case will be completed in 90 days so that in all cases, the utility will implement a rate increase based on their "projected costs and revenues", not on audited historical costs as currently required by the Commission.¹ None of the states allow utilities to "pancake" rate applications, as HB 5523 does.

¹ The ten or so states that allow rate increases to take effect after a certain period, without suspension, also have a history of completing the cases before the end of the statutory period so "automatic" increases rarely occur.

Mr. Joos also testified that the current power supply and gas cost recovery clauses in Michigan are tantamount to the "file and use" system embodied in HB 5523. In fact, Sections 460.6j(8) and 460.6h(8) allow the Commission, on its own motion or the motion of any party, to seek a temporary order prior to the expiration of the 90 day period following the filing of a utility plan case. The Commission has in fact, issued temporary orders when it was apparent that the utility's proposed rate for purchased power or natural gas was excessive, most recently in connection with Consumers Energy's PSCR plan case for 2006 (Case No. U-14701). HB 5523 does not allow the Commission to issue a temporary order prior to the expiration of the 90 day period following the filing of the rate application.

Although the Customer Choice Coalition has numerous problems with the package of bills now tie-barred with HB 5523, we believe it is imperative to immediately correct the record with regard to the adoption of a so-called "file and use" system in Michigan and whether it is similar to regulatory systems in other states, as implied by Mr. Joos, or contrary to the vast majority of the systems in other states, as the evidence shows. As Representative Ebli suggested in her questioning of Mr. Tennis and Mr. Beaubien, if "file and use" had been in effect, Michigan's electric rates would be \$1.2 billion higher than they are today. We would be happy to share the research underlying our findings if you so desire.